

## FEDERAL RESERVE SYSTEM

Hudson Valley Holding Corp.  
Yonkers, New York

### Order Approving the Acquisition of a Bank

Hudson Valley Holding Corp. (“Hudson Valley”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to acquire New York National Bank (“NYNB”), Bronx, New York. Hudson Valley operates one subsidiary insured depository institution, Hudson Valley Bank, also in Yonkers.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the Federal Register (70 Federal Register 22,314 (2005)).<sup>3</sup> The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Hudson Valley, with total consolidated assets of approximately \$1.9 billion, is the 41st largest depository organization in New York, controlling deposits of approximately \$1.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state

---

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> Hudson Valley proposes to convert NYNB to a state-chartered bank and to operate it as a separate subsidiary. NYNB would be merged with and into an interim national bank, NYNB Bank, N.A., and immediately thereafter, the interim national bank would be converted to NYNB Bank, a bank chartered by the State of New York. Applications for these transactions were filed with the Office of the Comptroller of the Currency (“OCC”) and the New York State Banking Department.

<sup>3</sup> 12 CFR 262.3(b).

(“state deposits”). NYNB, with total consolidated assets of approximately \$133 million, is the 156<sup>th</sup> largest insured depository institution in New York, controlling deposits of approximately \$118 million. On consummation of the proposal, Hudson Valley would become the 40th largest depository organization in New York, controlling deposits of approximately \$1.5 billion, which represent less than 1 percent of state deposits.<sup>4</sup>

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.<sup>5</sup>

Hudson Valley and NYNB compete directly in the Metro New York banking market.<sup>6</sup> The Board has reviewed carefully the

---

<sup>4</sup> Asset data are as of March 31, 2005. Deposit data and state rankings are as of June 30, 2005, and are adjusted to reflect mergers and acquisitions completed through December 5, 2005.

<sup>5</sup> 12 U.S.C. § 1842(c)(1).

<sup>6</sup> The Metro New York banking market includes: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren Counties and portions of Mercer County in New Jersey; Pike County in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven Counties in Connecticut.

competitive effects of the proposal in this banking market in light of all the facts of record.<sup>7</sup> In particular, the Board has considered the number of competitors that would remain in the market, the relative shares of total deposits of depository institutions in the market (“market deposits”) controlled by Hudson Valley and NYNB,<sup>8</sup> the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),<sup>9</sup> and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in the Metro New York banking market,

---

<sup>7</sup> Hudson Valley has 19 branches, including two branches in Bronx County. NYNB has six branches, including its main office is in Bronx County.

<sup>8</sup> Deposit and market share data are as of June 30, 2005, are adjusted to reflect subsequent mergers and acquisitions through December 5, 2005, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>9</sup> Under the DOJ Guidelines, a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

and numerous competitors would remain in the market.<sup>10</sup> The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Metro New York banking market or in any other relevant banking market and that competitive considerations are consistent with approval.

#### Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state banking supervisors of the organizations involved,

---

<sup>10</sup> Hudson Valley operates the 45th largest depository institution in the market, controlling deposits of approximately \$1.4 billion, which represent less than 1 percent of market deposits. NYNB operates the 174th largest depository institution in the market, controlling deposits of approximately \$118 million. After the proposed acquisition, Hudson Valley would operate the 43rd largest depository institution in the market, controlling deposits of approximately \$1.5 billion, which represent less than 1 percent of the market. The HHI would remain unchanged at 1069. Two hundred and fifty-eight depository institutions would remain in the banking market after consummation of this proposal.

publicly reported and other financial information, information provided by Hudson Valley, and public comment received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Hudson Valley has sufficient financial resources to effect the proposal. The transaction will be funded by a dividend from Hudson Valley Bank to Hudson Valley. Hudson Valley and its subsidiary bank are well capitalized and would remain so on consummation of this proposal.

The Board also has considered the managerial resources of Hudson Valley, Hudson Valley Bank, and NYNB and the effect of the proposal on these resources. The Board has reviewed the examination records of Hudson Valley and its subsidiary banks and NYNB, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records

of compliance with applicable banking law. Hudson Valley and its subsidiary depository institution are considered to be well managed. The Board also has considered Hudson Valley's plans for implementing the proposal, including the proposed management after consummation.

After careful consideration of all the facts of record, the Board has determined that Hudson Valley's managerial resources, including its risk management, are consistent with approval. In reaching this conclusion, the Board considered the existing compliance and internal audit programs at Hudson Valley and Hudson Valley Bank and the assessment of these systems and programs by the relevant federal and state supervisory agencies. The Board also has consulted with the Federal Deposit Insurance Corporation ("FDIC"), the primary federal regulator of Hudson Valley Bank, and the bank's state regulator. In addition, the Board has considered information provided by Hudson Valley on enhancements it has made and is currently making to its systems and programs as part of an ongoing review, including development, implementation, and maintenance of effective compliance policies and programs.<sup>11</sup>

Based on all the facts of record, including a review of the public comments received and information provided by Hudson Valley and by the primary federal and state regulators of the organizations involved, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Hudson Valley, Hudson Valley Bank, and NYNB are

---

<sup>11</sup> A commenter urged the Board to deny the application because Hudson Valley disclosed in filings with the Securities and Exchange Commission that the FDIC had found deficiencies in Hudson Valley Bank's consumer compliance program.

consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).<sup>12</sup> The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.<sup>13</sup>

The Board has considered carefully all the facts of record, including the CRA performance evaluation records of Hudson Valley Bank and NYNB, data reported by Hudson Valley Bank and NYNB in 2004 under the Home Mortgage Disclosure Act (“HMDA”),<sup>14</sup> small business lending data reported by the banks under the CRA, other information provided by Hudson Valley, confidential supervisory information, and public comment received on the proposal. A commenter criticized Hudson Valley Bank’s record of small business lending, alleging that it disproportionately lent to businesses

---

<sup>12</sup> 12 U.S.C. § 2901 *et seq.*

<sup>13</sup> 12 U.S.C. § 2903.

<sup>14</sup> 12 U.S.C. § 2801 *et seq.*

in middle- and upper-income census tracts and did not provide enough loans to businesses in LMI census tracts.<sup>15</sup> Specifically, the commenter alleged that Hudson Valley Bank's business plan focused on affluent customers and that the bank made few home mortgage loans and small business loans in LMI or predominantly minority communities. The commenter also asserted, based on data reported under HMDA, that Hudson Valley Bank has engaged in discriminatory treatment of minority individuals in its home mortgage operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>16</sup>

Hudson Valley Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 1, 2004.<sup>17</sup> NYNB received an "outstanding" rating at its most recent CRA performance

---

<sup>15</sup> The commenter also alleged that Hudson Valley Bank's low loan-to-deposit ratio suggested that the bank sought deposits from, but did not adequately lend to, LMI areas in the Bronx. Hudson Valley Bank noted that as of May 31, 2005, the loan-to-deposit ratio for its Bronx branches was higher than the bank's overall loan-to-deposit ratio.

<sup>16</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

<sup>17</sup> The evaluation period was January 22, 2002, through December 1, 2004.



evaluation by the OCC, as of June 30, 1997. Hudson Valley plans to implement the CRA policies, programs, and procedures of Hudson Valley Bank at NYNB after consummation of this proposal.

**B. CRA Performance of Hudson Valley Bank and NYNB**

*Hudson Valley Bank.* As noted above, Hudson Valley Bank received an overall “satisfactory” rating at its most recent CRA performance evaluation. Although Hudson Valley Bank received a rating of “needs to improve” under the investment test, the bank received a rating of “high satisfactory” under the lending test. In addition, the FDIC stated that it gave greater weight to small business lending in evaluating the bank’s overall lending record because small business loans constituted such a large percentage of its loan portfolio.<sup>18</sup> The examiners concluded that the bank’s record of lending, in light of the product lines offered by the bank, reflected good distribution among customers of different income levels and that the bank had been a leader in originating community development loans in the assessment area.<sup>19</sup>

Hudson Valley Bank is one of the leading small business lenders in LMI census tracts in its assessment area.<sup>20</sup> Small business loans represented more than 85 percent of the number and dollar amount of the bank’s total loans

---

<sup>18</sup> For purposes of this analysis, small business loans included business loans with an original amount of \$1 million or less.

<sup>19</sup> Although the Board has recognized that depository institutions help to serve the banking needs of communities by making a variety of products and services available, neither the CRA nor the federal banking agencies’ CRA regulations require an institution to provide any specific types of products or services in its assessment areas.

<sup>20</sup> The examiners also noted that the aggregate data for small business loans in this area included several large credit card banks that recorded each advance drawn on their cards as an individual small business loan, which might have overstated their activity in the assessment area.

originated in its assessment area in 2003. The examiners noted that Hudson Valley Bank's small business lending (by total number and dollar amount as a percentage of total loans) in LMI census tracts in its assessment area approximated the volume for the aggregate of all lenders ("aggregate lenders").<sup>21</sup>

In their review of 2003 HMDA data, examiners found that although the bank's residential mortgage loans in LMI areas in its assessment area compared unfavorably with the distribution by the aggregate lenders, the bank's distribution of such loans to borrowers of different income levels was adequate.<sup>22</sup> They also noted that the bank's percentage of home purchase loans to LMI borrowers approximated or exceeded the percentage for the aggregate lenders.<sup>23</sup>

Examiners also commended Hudson Valley Bank for its role as a leader in providing community development loans in its assessment area. As of September 30, 2004, its outstanding community development loans and commitments totaled \$32.9 million. Examiners noted that the majority of the

---

<sup>21</sup> The lending data of the aggregate of lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area. In 2004, Hudson Valley Bank's total dollar value and originations for small business lending in LMI census tracts in its assessment area approximated or exceeded the aggregate lenders' performance.

<sup>22</sup> Examiners noted that the bank's opportunities to make residential loans in LMI areas were limited by a low percentage of owner-occupied units in the assessment area and by a low median income that was substantially less than the median value of residential properties.

<sup>23</sup> In 2004, Hudson Valley Bank received 91 mortgage applications, which resulted in 42 mortgage loans in its assessment area.

bank's community development lending supported social services programs for economically disadvantaged residents in the assessment area.

The bank received an overall rating of "high satisfactory" under the service test. The examiners found that Hudson Valley Bank provided a commendable level of support to its community. The evaluation noted that the bank's retail banking services were reasonably available to all segments of the assessment area through online banking, an ATM network, and extended branch hours. The examiners also commended Hudson Valley Bank for providing a relatively high level of community development services.

*NYNB.* As previously noted, NYNB received an "outstanding" rating at its most recent CRA performance evaluation. Examiners found that NYNB's overall lending activity demonstrated responsiveness to the credit needs of its assessment area. NYNB provides banking services to an area that is significantly underserved by other banking institutions. Examiners reported that the bank's level of qualified community development investments in its assessment area was good relative to the size and capacity of the institution. The examiners also noted that the bank's investments and community development services had increased credit availability in the assessment area.

#### C. HMDA and Fair Lending Record

The Board has considered carefully Hudson Valley Bank's lending record and HMDA data in light of public comment about its record of lending to minorities. The commenter expressed concern, based on 2004 HMDA data, that Hudson Valley Bank disproportionately excluded or denied applications by African-American and Hispanic applicants for HMDA-reportable loans. In support of this assertion, the commenter also referenced Hudson Valley

Bank's low number of home mortgage applications from and originations to African-American and Hispanic applicants. The Board reviewed the HMDA data for 2004 reported by Hudson Valley Bank in its assessment area, which is part of the Metro New York banking market.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they are insufficient by themselves to conclude whether or not Hudson Valley Bank is excluding any racial or ethnic group, or imposing higher credit costs on these groups, on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information,<sup>24</sup> provide only limited information about the covered loans.<sup>25</sup> HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

---

<sup>24</sup> Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 percentage points for first-lien mortgages and by 5 percentage points for second-lien mortgages (12 CFR 203.4).

<sup>25</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race. Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by Hudson Valley Bank with fair lending laws and the CRA performance records of Hudson Valley Bank and NYNB that are detailed above. In the fair lending review conducted in conjunction with its CRA evaluation, examiners noted no substantive violations of applicable fair lending laws by Hudson Valley Bank. The Board has also consulted with the primary banking supervisors of Hudson Valley Bank and NYNB about this proposal and the compliance records of the banks since their last examinations.

The record also indicates that Hudson Valley Bank has taken steps to help ensure compliance with fair lending laws and other consumer protection laws. Hudson Valley Bank has implemented comprehensive operating procedures and quality control measures to confirm that appropriate consumer compliance policies and procedures are followed. The bank has implemented increased compliance training for staff, including semiannual updates on relevant issues for all employees, and annual updates for all personnel whose responsibilities include providing information about the Bank's loan products and services. In addition, the bank has established a system for compliance monitoring by senior management and the board of directors.

The Board also has considered the HMDA data in light of other information, including the overall CRA performance record of Hudson Valley Bank and NYNB. These efforts demonstrate that the institutions are active in

meeting the convenience and needs of their communities and that their records of performance are consistent with approval of this proposal.

D. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, comments received on the proposal, information provided by Hudson Valley, and confidential supervisory information. The Board notes that the proposal would provide customers of the combined entity with access to a broader array of products and services in expanded service areas, including trust services, internet banking, and telephone banking service. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>26</sup> In

---

<sup>26</sup> The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 225.16(e)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that have been considered carefully by the Board in acting on the

reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act.<sup>27</sup> The Board's approval is specifically conditioned on compliance by Hudson Valley with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this transaction, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than

---

proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

<sup>27</sup> The commenter also requested that the Board delay action or extend the comment period on the proposal. As previously noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comment. As also noted, the commenter has had ample opportunity to submit its views and, in fact, has provided substantial written submissions that the Board has considered carefully in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time, and that further delay in considering the proposal, extension of the comment period, or denial of the proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>28</sup> effective December 6, 2005.

*(signed)*

---

Robert deV. Frierson  
Deputy Secretary of the Board

---

<sup>28</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.